

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re: CASE NO.: 19-71697-ast  
CHAPTER 13  
JUDGE ALAN S. TRUST  
John Francis Vivenzio  
*dba Vivenzio Associates, LLC*  
*dba Intelintix Software*  
Debtor.  
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**DIRECT TESTIMONY BY AFFIDAVIT**

Nik Fox, being duly sworn, deposes and says:

1. I am the Default Contested Case Manager for Selene Finance, LP (“Selene”) as servicer for NJCC-NYS Community Restoration Fund LLC (the “Secured Creditor”), a secured creditor of the above captioned Debtor. Selene is acting in its capacity as servicer for NJCC-NYS Community Restoration Fund LLC. The within Affidavit is submitted in support of the Secured Creditor’s Motion for Relief from Stay and in accordance with the Order of this Court, filed July 28, 2020 and entered July 29, 2020, Setting an Evidentiary Hearing by Video Conference and Establishing Related Deadlines.

2. I have been employed by Selene since June 2014 and have been in my current position throughout my entire term of employment. In that capacity, I am responsible for the maintenance and review of loan files, including loans that are in foreclosure, bankruptcy, mediation and litigation, and also prepare for, attend and testify at trials and hearings. As such, I am fully familiar with the facts and circumstances set forth herein and am authorized to sign this affidavit on behalf of Selene and the Secured Creditor.

3. As part of my responsibilities, I am personally familiar with the type of records that are maintained by Selene on behalf of the Secured Creditor and am personally familiar with the manner in which said records are introduced and integrated into Selene's business records. I have personal knowledge of Selene's procedures for creating and maintaining these records. These records are made at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter, by a person with knowledge, and are made in the course of business activity conducted by Selene. These records include data compilations (including the date certain original documents such as original promissory notes and allonges were received), electronic images of documents, and a wide array of supplementary documentation. The business records, such as transaction and payment histories, that were created by prior holders and/or servicers of the loan have been integrated into Selene's business records and are kept and relied upon as a regular business practice and in the ordinary course of business conducted by Selene. I have personal knowledge of these procedures for integrating prior servicer records.

4. In my capacity as Default Contested Case Manager, I have access to Selene's business records, including the business records for and relating to the loan of John Francis Vivenzio (the "Debtor"), secured by the real property known as 153 Quaker Path, E Setauket, New York 11733 (the "Property"). The business records I have personally reviewed and obtained information from include, but are not limited to, Selene's proprietary system of record known as the Selene Asset Resolution Application, also known as S.A.R.A. ("S.A.R.A."). The facts stated in this Affidavit are based upon my own personal knowledge from information that I have obtained by reviewing records maintained in the ordinary course of business, as part of regularly conducted business activity, by or from information transmitted by person(s) with knowledge of the events described therein, at or near the time of the event described.

5. According to the aforementioned business records, the Debtor executed and delivered a Note dated June 11, 2004 in favor of CitiMortgage, Inc. in the original principal amount of \$332,500.00 (the "Note"). The Note is secured by a Mortgage executed and delivered to Mortgage Electronic Registration Systems, Inc. as nominee for CitiMortgage, Inc., June 11, 2004. Copies of the Note and recorded Mortgage are included in the Secured Creditor's Proof of Claim filed on May 6, 2019 and annexed hereto as **Exhibit 1**.

6. Since origination of the loan, the Note and Mortgage were transferred and assigned multiple times. Pursuant to the records regularly generated and maintained by Selene in S.A.R.A, the original Note herein was ultimately transferred to NJCC-NYS Community Restoration Fund LLC on December 15, 2017. The Secured Creditor has maintained the original Note with its custodian, U.S. Bank National Association, at 1133 Rankin Street, Suite 100, St. Paul, MN 55116, since that date and has not transferred or otherwise negotiated the Note to any other creditor or entity since its acquisition and receipt on said date. A copy of the business record generated and maintained in S.A.R.A. confirming physical receipt of the Note by U.S. Bank National Association on behalf of the Secured Creditor on December 15, 2017 is annexed hereto as **Exhibit 2**.

7. The original Note contains one endorsement which appears to be an original signature from CitiMortgage, Inc. into blank. The endorsement is stamped upon the Note and reads "Janet L. Sims, Vice President, CitiMortgage, Inc." and endorses the Note without recourse "Pay to the Order of \_\_\_\_\_".

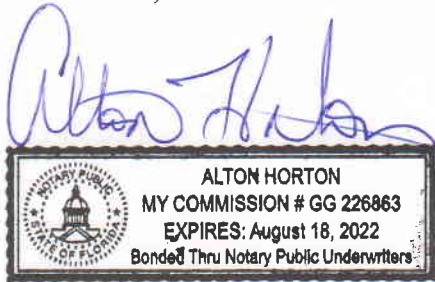
8. The results of my review of Selene's business records supports the sworn statement offered by Genevieve Jacobs, Bankruptcy Specialist for Selene, in the Affidavit of


Possession signed, filed and entered on May 12, 2020. A copy of the Affidavit of Possession with exhibits annexed thereto are attached here as **Exhibit 3**.

9. As further evidence of the transfer and acquisition of the subject Note and Mortgage by the Secured Creditor, an assignment of mortgage was ultimately executed on September 27, 2018 and recorded with the Suffolk County Clerk of the State of New York on April 30, 2019 at Liber M00023024 Page 042. A copy of the recorded Assignment of Mortgage is attached hereto as **Exhibit 4**.

10. Based upon my personal knowledge from information that I have obtained by reviewing Selene's business records, I can attest that the Secured Creditor was in possession of the subject Note and Mortgage prior to the filing of its Proof of Claim in this proceeding on May 6, 2019, and has remained in possession of the Note and Mortgage through today's date.

Dated: August 11, 2020  
Jacksonville, FL



  
Nik Fox  
Default Contested Case Manager  
Selene Finance, LP as servicer for NJCC-NYS  
Community Restoration Fund LLC

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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	:	
	:	CHAPTER: 13
John Francis Vivenzio	:	
<i>dba Vivenzio Associates, LLC</i>	:	HON. JUDGE.:
<i>dba Intelintix Software,</i>	:	Alan S. Trust
	:	
	:	
Debtor.	:	
	:	
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**CERTIFICATE OF SERVICE**

I, Richard Postiglione, certify that on August 11, 2020 I caused to be served a true copy of the annexed **DIRECT TESTIMONY BY AFFIDAVIT** by mailing by First Class Mail in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service addressed to the last known address of the addressee, and the property address as indicated on the attached Service List annexed hereto.

By: /s/ Richard Postiglione  
FRIEDMAN VARTOLO LLP  
1325 Franklin Avenue, Ste. 230  
Garden City, New York 11530  
T: (212) 471-5100  
F: (212) 471-5150

**SERVICE**  
**LIST**

John Francis Vivenzio  
153 Quaker Path  
Setauket, NY 11733  
***Debtor***

Marianne DeRosa  
Office of the Chapter 13 Trustee  
100 Jericho Quadrangle  
Suite 127  
Jericho, NY 11753  
***Trustee***